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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/418,902	10/15/1999	WALTER V. KLEMP	P01896US0	9464

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EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 09/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/418,902

Applicant(s)

KLEMP ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18, 54-60 and 73-80 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 76-80 is/are allowed.
- 6) ☒ Claim(s) 1-18, 54-57, 59, 60, 73 and 74 is/are rejected.
- 7) ☒ Claim(s) 58 and 75 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 16, 2004 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3 – 4, 6 – 18, 54 – 58, 60 and 73 – 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turner et al. (US 6,135,988).

With respect to claim 1, Turner et al (hereinafter referred to as Turner), teaches a disposable absorbent article having side and end edges (10), a topsheet layer (12), a backsheet layer (14), an absorbent core (16), and an end strip (18, 19) as shown below:



located on a different position of the tab).

article include a pair of end strips.

absorbent article of Turner to provide a second end strip since it has been held that

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mere duplication of essential working parts of a device involves only routine skill in the art.

Regarding claim 3, Turner discloses the first and second sections being secured to the topsheet in col. 4, lines 37 – 40.

With reference to claims 4, 8 and 10, Turner shows the end strip to be formed from elastic material in col. 9, lines 42 – 43.

With respect to claim 6, Turner teaches the first section to form a waistband portion in figure 3.

Regarding claim 7, Turner discloses the first section fixed along one of said end edges in figure 3.

As to claims 8 and 10, the third section is formed from elastic material as set forth in the rejection of claim 1.

With reference to claim 9, Turner shows the article with the third section including side portions, a pair of side walls (64), and each side portion of the third section being secured to one of the end portions of the side wall structure (figure 1) with an intermediate portion of each side wall being biased generally upward as set forth in col. 12, lines 52 – 57.

With respect to claim 11, Turner teaches the article with a containment pocket having a depth dimension (col. 5, lines 19 – 22), and being bound by a substantially continuous wall being defined by the third sections of the end strip (figures 1 and 6).

With reference to claims 12 – 13, 60, 62 and 67, Turner has disclosed a pocket being formed in col. 4, line 65 to col. 5, line 7. This pocket would obviously provide a

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depth dimension as claimed by the applicant. It would be obvious to one of ordinary skill in the art to adjust the depth measurement in order to arrive at the claimed invention through the use of mere routine experimentation and observation.

As to claim 14, Turner discloses the article wherein an intermediate portion of each of the side edges extending generally parallel with the core is upwardly biased in figure 6.

With reference to claim 15, Turner teaches the wall structure to include a portion of the topsheet at least one elastic member in col. 12, lines 36 – 40 and figure 6).

Regarding claim 16, Turner shows the first and second sections fixed to the topsheet (col. 4, lines 38 – 40), the third section extending upwardly (col. 4, line 65, figure 6) and the first and third sections being elastic (col. 9, lines 42 – 43) with the second section substantially inelastic (figure 5 and the rejection of claim 1).

As to claim 17, Turner discloses a front waist region (32), a back waist region (34), a crotch region (36), the core being disposed in the crotch region (16), an ear region (figure 3), and an end strip extending laterally into two of said ear regions as set forth in figure 3.

With respect to claim 18, Turner provides an end strip constructed from elastic material (col. 9, lines 54 – 67) being secured to the topsheet (col. 4, lines 38 – 40), which would in turn serve to provide tension in the waist region.

With respect to claims 54 – 58, Turner teaches an article meeting all of the limitations of the claims as previously addressed in the rejection of claims 1 – 18 with

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the fixed waist section being represented by the rear end edge (43) and the elastic inward section being represented by the elastic strands.

Regarding claim 60, the absence of a critical teaching and/or unexpected results leads the examiner to believe that the claimed limitation would be an obvious matter of design choice that does not patentably distinguish the claimed invention from the prior art invention.

With reference to claims 73 and 74, see the rejection of claim 1 and figure 5.

Claims 1 – 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sageser et al. (US 6,039,906).

With respect to claim 1, Sageser et al (hereinafter referred to as Sageser), teaches a disposable absorbent article having side and end edges, a topsheet layer, a backsheet layer, an absorbent core disposed therebetween (col. 3, lines 10 – 16), and an end strip (col. 4, lines 46 – 50).

Sageser discloses the first section having generally elastic properties and laterally extending in generally parallel relation with the end edges, and the second section can be understood to be substantially less elastic than the first section since the second section does not include the elastic strand. Likewise, the second section extends in generally parallel relation therewith. Additionally, Sageser teaches the third section being spaced away from the topsheet and core wherein each section of the end strip is distinctly elastic and distinctly positioned relative to said other sections as set forth in figure 1.

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The difference between Sageser and claim 1 is the provision that the absorbent article include a pair of end strips.

It would have been obvious to one of ordinary skill in the art to modify the absorbent article of Sageser to provide a second end strip since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art.

With reference to claims 2 and 5, the plurality of voids in the second section substantially de-elasticizeds the area of the second section as set forth in figure 1 and supported by the applicant's disclosure.

As to claims 3 – 4 and 8, the first and second sections are secured to the topsheet and are formed from elastic material as set forth in col. 4, lines 46 – 50.

As to claims 6 and 7, the first section is fixed along one of the end edges and forms a waistband as set forth in figure 1.

Allowable Subject Matter

Claims 59 and 75 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 76 – 80 are allowed.

Response to Arguments

Applicant's arguments filed July 16, 2004 have been fully considered but they are not persuasive.

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Regarding the applicant's request for the examiner to point out the three "sections" in the Turner reference that correspond to the claimed elements, the examiner has done so in the rejection of claim 1 by annotating figure 5 above for illustrative purposes. The examiner contends that the sections represented by Turner fully meet the claimed limitations as explained in the rejection of claim 1.

Contrary to applicant's assertion, the sections of Turner have both width and length dimensions which allow them to extend in the claimed spatial relationships to other sections/elements of the article. Further, there are several segments to the third section as noted by the examiner in the annotation of figure 5. Therefore, the second from the last segment of the third section may be considered longitudinally inward of the outermost segment of the second segment.

Regarding the Sageser reference, the applicant continues to argue "three distinct sections". As discussed in the interview of August 26, 2003, the examiner found the language ambiguous and as a result, the applicant has removed the language from the claims. Therefore, the examiner finds that the applicant's arguments regarding this point are not commensurate with the claim language.

By applicant's own admission Sageser discloses an elastic panel sandwiched between the topsheet and the backsheet, thereby providing a separate element spaced away from the topsheet and the core. Sageser does provide a second section that is more elastic than the first as shown in figure 1. The middle panel has 6 apertures versus the nine apertures on either end. Since the applicant has acknowledged that voids formed in the elastic section substantially de-elasticize an area adjacent to the

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void, the examiner contends that an a panel having nine apertures would be less elastic than an panel having six apertures as shown by Sageser. Therefore, Sageser does provide a second section that is more elastic than a first.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., first and second sections that are not secured to the topsheet) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The examiner also notes that both Turner and Sageser disclose the end strip being formed from an elastic material as set forth in col. 9, lines 33 – 41 and in col. 3, lines 13 – 16, respectively.

With respect to the applicant's numerous arguments directed toward terminology used in the claims and their definitions, the applicant is reminded that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on 703-308-1412. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michele Kidwell
Examiner
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